

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1908 OF 2021

Rajesh Atmaram Supatkar
 Aged : 50 Years, Occupation: Service,
 Residing at New Mankapur,
 Plot No. 37, Koradi Road,
 Nagpur - 440030

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.. Petitioner

Versus

1. The Sub-Divisional Officer,
 Soaner having its office at New
 Administrative Building, Ground Floor,
 Soaner, District : Nagpur.

2. The Tahsildar, Soaner having its Office
 at New Administrative Building, Ground
 Floor, Soaner, District : Nagpur

3. The Talathi, Mouza: Warpani, Taluka:
 Soaner, District : Nagpur.

4. Kantabai Deepak Kashap
 Aged : years, Occupation: Nil,
 Residing at Byramji Town, Adiwasi
 Nagar, Nagpur.

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.. Respondents

Mr. Rahul Dhande, Advocate for petitioner.

Mr. H.D. Dubey, Addl.G.P. for respondents/State.

Mr. B.D. Patrikar, Advocate for respondent No.4.

CORAM : MANISH PITALE, J.

DATE : 07/04/2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The matter is heard finally by the consent of the learned counsel for the parties.

(2) By this writ petition, the petitioner has challenged report of the Talathi, sanction order of the Sub-Divisional Officer (SDO) and a consequential order passed by the Naib Tahsildar, contending that the entire exercise was wholly without jurisdiction and beyond the powers available under the provisions of the Maharashtra Land Revenue Code, 1966.

(3) The facts in brief leading to filing of the present writ petition are that on 15.06.1973, the predecessor of the petitioner was granted specific area of land from City Survey No. 27/1-2. The petitioner does not dispute that some part from the said Survey was allotted to the predecessor of the respondent No.4. Thereafter, part of the land was acquired and the land survey numbers were renumbered.

(4) According to the petitioner, confusion arose as to the location of the land of the petitioner and the respondent No.4 as the new Survey Nos.33 and 34 came to be allotted to the said land. In pursuance of the petitioner approaching the authorities, a survey was conducted and the Taluka Inspector of land Records (TILR) prepared a report in the presence of the petitioner and the predecessor of the respondents. After perusing the said report of the

TILR, the SDO, on 30.11.2004, passed an order exercising powers under Sections 106, 135 and 257 of the aforesaid Code, directing that mutation entries be made in respect of the lands in Survey Nos.33 and 34, in terms of the findings given by the TILR upon survey conducted by the said authority. Consequently, mutation entries were made in pursuance of the said order dated 30.11.2004, which recorded that the land of respondent No.4 was located in Survey No.33/1 and 33/3. There is no dispute about the fact that the said order of the SDO dated 30.11.2004, continues to hold the field.

(5) On 27.11.2019, the respondent No.4 approached the Tahsildar, making a grievance about the petitioner allegedly interfering with land in her possession and seeking consequential action in the matter. On the basis of the aforesaid complaint, the respondent No.4 – Naib Tasildar, on 27.01.2020, sent a communication directing the Talathi to conduct a spot inspection and to furnish a report. In pursuance thereof on 26.02.2020, the Talathi submitted his report to the Tahsildar. In the face of such material, on 10.09.2020, the SDO passed an order granting permission/sanction for the Naib Tahsildar to exercise power under Section 257 of the aforesaid Code by examining the records.

Pursuant thereto, the Tahsildar passed the impugned order dated 03.03.2021, holding that land in Survey No.34/1 and 34/3 belonged to respondent No.4.

(6) The petitioner is aggrieved by the said report of the Talathi dated 26.02.2020, order of the SDO dated 10.09.2020 and the consequential order dated 03.03.2021, passed by the Naib Tahsildar.

(7) This Court, while issuing notice on 10.06.2021 in the present writ petition, recorded the contention raised on behalf of the petitioner that the impugned report and orders passed by the authorities below were wholly without jurisdiction and that therefore, the writ petition was maintainable before this Court. While issuing notice, this Court granted ad-interim stay.

(8) Mr. Dhande, learned counsel appearing for the petitioner invited attention of this Court to the documents placed on record and submitted that when the SDO had passed order dated 30.11.2004, pursuant to which mutation entries were made recording that the land of respondent No.4 was located in Survey Nos.33/1 and 33/3, after about 15 years, there was no propriety on the part of the SDO and much less on the part of the Tahsildar, to

have reopened the matter, purportedly exercising power under Section 257 of the aforesaid Code. It was submitted that the order dated 30.11.2004 passed by the SDO was never made subject matter of challenge by respondent No.4 or his predecessor and therefore, the whole exercise initiated at the behest of the respondent No.4 by filing complaint dated 27.12.2019, was without jurisdiction and that the impugned report as well as orders passed by the SDO and Naib Tahsildar deserved to be set aside.

(9) Attention of this Court was invited to judgment of the Hon'ble Supreme Court in the case of ***Santoshkumar Shivgonda Patil and others vs. Balasaheb Tukaram Shevale and others (2009) 9 Supreme Court Cases 352***, wherein the Supreme Court held that even if specific period of limitation is not provided under Section 257 of the aforesaid Code for exercising revisional powers, reasonable period of limitation of three years as per settled law has to be read into the said provision. On this basis, learned counsel submitted that the present writ petition deserved to be allowed.

(10) On the other hand, Mr. Patrikar, learned counsel appearing for respondent No.4 submitted that upon the said

respondent raising grievance before the Tahsildar, power available under Section 155 of the aforesaid Code for correcting clerical errors was exercised in the present case and that therefore, the impugned orders cannot be said to be without jurisdiction. It was submitted that if that be so, then the writ petition was not maintainable, as alternative efficacious remedy of filing appeal under the provisions of the said Code was available to the petitioner.

(11) It was further submitted that record of rights i.e. 7/12 extracts placed on record with the reply filed on behalf of respondent No.4 show that the name of the predecessor of respondent No.4 was consistently recorded in respect of Survey No.34 and that therefore, it was evident that there was a clerical error, which was leading to confusion and unnecessary dispute between the parties. On this basis, it was submitted that the present writ petition deserved to be dismissed.

(12) Mr. Dubey, learned Assistant Government Pleader appeared on behalf of the respondent Nos.1 to 3 and defended the impugned orders passed by the SDO and the Naib Tahsildar.

(13) Having heard the learned counsel for the rival parties, it is necessary to peruse the documents placed on record. It is evident from the documents available on record that when there was some confusion as regards location of the lands of the rival parties, a proceeding was initiated at the behest of the petitioner and measurement was conducted by the TILR. There is no dispute about the fact that the measurement was duly conducted in the presence of predecessor of respondent No.4. In pursuance of the report furnished by the TILR, the SDO passed the order on 30.11.2004, specifically exercising power under Sections 106,105 and 257 of the aforesaid Code to give directions in pursuance of which mutation entries were made. In the said mutation entry, it was recorded that the land belonging to respondent No.4 was located in Survey No.33/1 and 33/3. There is no dispute about the fact that the said order was never made subject matter of challenge on the part of respondent No.4 or any other person. The said order dated 30.11.2004 continues to hold the field.

(14) It was only on 27.12.2019 i.e. 15 years after the order dated 30.11.2004 was passed by the SDO that the respondent No.4 raised grievance before the Tahsildar. This communication also indicates that the respondent No.4 claimed that her possession was

being disturbed and that there was encroachment or at least attempts at encroachment. The Naib Tahsildar, without appreciating the effect of the order dated 30.11.2004 passed by the SDO, directed the Talathi to conduct an enquiry into the matter, which resulted in the impugned report dated 26.02.2020. Thereafter, the SDO passed the order dated 10.09.2020, purportedly exercising power under Section 257 of the Code. In fact, the language used in the said order/direction given to the Tahsildar indicates that the SDO granted permission to the Tahsildar to exercise revisional power under Section 257 of the aforesaid Code, resulting in the consequential impugned order dated 03.03.2021. In the scheme of the Code, it is difficult to place the source of exercise of power by the SDO in the aforesaid manner. The effect of the impugned order dated 10.09.2020 and consequential order of the Naib Tahsildar dated 03.03.2021, was that the order dated 30.11.2004 passed by the SDO stood reviewed. Such an exercise of power cannot be countenanced under the scheme of the aforesaid Code. The SDO as also the Naib Tahsildar completely failed to appreciate this aspect of the matter.

(15) The Learned counsel for the petitioner is therefore, justified in relying upon the judgment of the Hon'ble

Supreme Court in the case of *Santoshkumar (supra)*, wherein the Supreme Court in the context of time limit for exercise of revisional power under Section 257 of the Code held as follows:

“11. It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein.”

(16) In the present case, the Naib Tahsildar as well as SDO purported to exercise revisional powers under Section 257 of the Code, 15 years after the order dated 30.11.2004 was passed by the SDO and mutation entries were taken as noted above. On this ground itself the impugned orders and the report of the Talathi are found to be issued without jurisdiction.

(17) Insofar as the contention raised on behalf of respondent No.4 in the context of Section 155 of the Code is concerned, in the first place, the effect of the impugned order cannot be said to be correction of any clerical error in the record. A perusal of Section 155 of the Code shows that clerical errors can be

corrected and any errors which the parties interested admit to have been made in the record of rights or registers maintained by the Officers. It is also indicated that if such an error is noticed during the course of an inspection by the Revenue Officer, correction can be carried out. Such is not the case in the facts and circumstances brought on record. The effect of the impugned order is that it nullifies order dated 30.11.2004 and consequential mutation entries made in the records, after more than 15 years and such changes being substantial in nature can certainly not be called clerical errors. Therefore, the source of power sought to be placed on behalf of the respondent No.4 in Section 155 of the aforesaid Code cannot be accepted. Reliance placed on 7/12 extracts is also misplaced because they pertain to the period prior to the order dated 30.11.2004 passed by the SDO.

(18) In view of the above, it is found that the impugned report of the Talathi dated 26.02.2020 and the impugned orders dated 10.09.2020 and 03.03.2021 passed by the SDO and the Naib Tahsildar cannot be sustained and they deserve to be quashed and set aside.

(19) Accordingly, the writ petition is allowed. The aforesaid report and the orders passed by the SDO and Naib Tahsildar are quashed and set aside.

(20) If at all the respondent No.4 has any grievance as regards disturbance of her possession in the land that rightfully belongs to her, she may exhaust remedies as may be available in law.

(21) At the fag end of the hearing, the learned counsel for the petitioner contended that despite interim order passed by this Court, the respondent No.4 allegedly dispossessed the petitioner. With respect to the said grievance, the petitioner has already approached the Tahsildar. Hence, the Tahsildar is directed to expeditiously consider the grievance raised by the petitioner, in accordance with law. Endeavor shall be made by the Tahsildar to decide such grievance within a period of eight weeks from today.

(22) Rule is made absolute in above terms.

[MANISH PITALE J.]

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